



[4910-13]

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2008-25755]

### Operating Limitations at New York LaGuardia Airport; Technical Amendment

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Order; Technical Amendment.

**SUMMARY:** The FAA is correcting a notice of extension to the order published on April 4, 2011 (76 FR 18616). In that notice, the FAA extended the order limiting operations at LaGuardia Airport until the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013. This document corrects errors in the amended order text of that document.

**DATES:** Effective immediately.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this Order contact: Patricia Bynum, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue S.W., Washington, DC 20591; telephone (202) 385-8704; fax (202) 493-4306; e-mail [patricia.bynum@faa.gov](mailto:patricia.bynum@faa.gov).

For legal questions concerning this Order contact: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone: (202) 267-7240; facsimile: (202) 267-7971; email: [rob.hawks@faa.gov](mailto:rob.hawks@faa.gov).

### SUPPLEMENTARY INFORMATION:

Background

On April 4, 2011, the FAA published a Notice of Extension to the Order Limiting Operations at New York LaGuardia Airport (LGA).<sup>1</sup> As a result of the extension, the Order remains effective until the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120-AJ89) becomes effective but not later than October 26, 2013.<sup>2</sup>

In that notice of extension, the FAA inadvertently amended paragraph (A)(1) of the amended order to remove the hourly operational authorization (OA) limits for LGA. Additionally, the notice preamble erroneously stated the FAA “maintains the current hourly limit on scheduled (75) . . . operations.” The FAA previously reduced the hourly limit on scheduled operations to 71.<sup>3</sup>

#### Technical Amendment

This technical amendment will revise paragraph (A)(1) of the amended order to include an hourly limit of 71 OAs, which is the current limit on scheduled operations at LGA.

#### **The Amended Order**

In consideration of the foregoing, the Order, as amended, is recited below in its entirety:

##### **A. Scheduled Operations**

With respect to scheduled operations at LaGuardia:

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<sup>1</sup> 76 FR 18616. That notice amended the Order that was published at 71 FR 77854 (Dec. 27, 2006) and amended by 72 FR 48428 (Nov. 8, 2007) (transfer, minimum usage, and withdrawal amendments), 72 FR 48428 (Aug. 19, 2008) (reducing unscheduled operations from 6 to 3), 74 FR 845 (Jan. 8, 2009) (extending expiration to October 24, 2009), 74 FR 2646 (Jan. 15, 2009) (reducing scheduled operations from 75 to 71), and 74 FR 51654 (Oct. 7, 2009) (extending expiration to October 29, 2011).

<sup>2</sup> This rulemaking project has been renamed to Slot Management and Transparency Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport, but the RIN has remained the same. This notice uses language consistent with the previously published notice.

<sup>3</sup> 74 FR 2646 (Jan. 15, 2009).

1. The final Order governs scheduled arrivals and departures at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday. Seventy-one (71) Operating Authorizations are available per hour and will be assigned by the FAA on a 30-minute basis. The FAA will permit additional, existing operations above this threshold; however, the FAA will retire Operating Authorizations that are surrendered to the FAA, withdrawn for non-use, or unassigned during each affected hour until the number of Operating Authorizations in that hour reaches seventy-one (71).
2. The final Order takes effect on January 1, 2007, and will expire when the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013.
3. The FAA will assign operating authority to conduct an arrival or a departure at LaGuardia during the affected hours to the air carrier that holds equivalent slot or slot exemption authority under the High Density Rule of FAA slot exemption rules as of January 1, 2007; to the primary marketing air carrier in the case of AIR-21 small hub/nonhub airport slot exemptions; or to the air carrier operating the flights as of January 1, 2007, in the case of a slot held by a non carrier. The FAA will not assign operating authority under the final Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority under 14 CFR part 121, 129 or 135. The Chief Counsel of the FAA will be the final decision maker regarding the initial assignment of Operating Authorizations.
4. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.
5. An air carrier may lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of the Order. Notice of a trade or lease under this

paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267-7277 or e-mail *7-AWASlotadmin@faa.gov*, and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. However, the FAA will approve transfers between carriers under the same marketing control up to 5 business days after the actual operation. This post-transfer approval is limited to accommodate operational disruptions that occur on the same day of the scheduled operation.

6. Each air carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations actually operated for each day of the two-month reporting period within 14 days after the last day of the two-month reporting period beginning January 1 and every two months thereafter. Any Operating Authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA except:

A. The FAA will treat as used any Operating Authorization held by an air carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

B. The FAA will treat as used any Operating Authorization obtained by an air carrier through a lottery under paragraph 7 for the first 120 days after allocation in the lottery.

C. The Administrator of the FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the air carrier and which affects carrier operations for a period of five consecutive days or more.

7. In the event that Operating Authorizations are withdrawn for nonuse, surrendered to the FAA or are unassigned, the FAA will determine whether any of the available Operating

Authorizations should be reallocated. If so, the FAA will conduct a lottery using the provisions specified under 14 CFR 93.225. The FAA may retime an Operating Authorization prior to reallocation in order to address operational needs. When the final Order expires, any Operating Authorizations reassigned under this paragraph, except those assigned to new entrants or limited incumbents, will revert to the FAA for reallocation according to the reallocation mechanism prescribed in the final rule that succeeds the final Order.

8. If the FAA determines that a reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the air carrier from which it was taken, provided that the air carrier continues to operate scheduled service at LaGuardia.

9. The FAA will enforce the final Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). An air carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, would be liable for a civil penalty of up to \$25,000 for every day that it violates the limits set forth in the final Order. An air carrier that is a small business as defined in the Small Business Act would be liable for a civil penalty of up to \$10,000 for every day that it violates the limits set forth in the final Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of the final Order.

#### B. Unscheduled Operations:<sup>4</sup>

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<sup>4</sup> Unscheduled operations are operations other than those regularly conducted by an air carrier between LaGuardia and another service point. Unscheduled operations include general aviation, public aircraft, military, charter, ferry,

With respect to unscheduled flight operations at LaGuardia, the FAA adopts the following:

1. The final order applies to all operators of unscheduled flights, except helicopter operations, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday.
2. The final Order takes effect on January 1, 2007, and will expire when the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 26, 2013.
3. No person can operate an aircraft other than a helicopter to or from LaGuardia unless the operator has received, for that unscheduled operation, a reservation that is assigned by the David J. Hurley Air Traffic Control System Command Center's Airport Reservation Office (ARO). Additional information on procedures for obtaining a reservation will be available via the Internet at <http://www.fly.faa.gov/ecvrs>.
4. Three (3) reservations are available per hour for unscheduled operations at LaGuardia. The ARO will assign reservations on a 30-minute basis.
5. The ARO receives and processes all reservation requests. Reservations are assigned on a "first-come, first-served" basis, determined as of the time that the ARO receives the request. A cancellation of any reservation that will not be used as assigned would be required.
6. Filing a request for a reservation does not constitute the filing of an instrument flight rules (IFR) flight plan, as separately required by regulation. After the reservation is obtained, an IFR

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and positioning flights. Helicopter operations are excluded from the reservation requirement. Reservations for unscheduled flights operating under visual flight rules (VFR) are granted when the aircraft receives clearance from air traffic control to land or depart LaGuardia. Reservations for unscheduled VFR flights are not included in the limits for unscheduled operators.

flight plan can be filed. The IFR flight plan must include the reservation number in the “remarks” section.

7. Air Traffic Control will accommodate declared emergencies without regard to reservations. Nonemergency flights in direct support of national security, law enforcement, military aircraft operations, or public use aircraft operations will be accommodated above the reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate reservation for such flights are available via the Internet at <http://www.fly.faa.gov/ecvrs>.

8. Notwithstanding the limits in paragraph 4, if the Air Traffic Organization determines that air traffic control, weather, and capacity conditions are favorable and significant delay is not likely, the FAA can accommodate additional reservations over a specific period. Unused operating authorizations can also be temporarily made available for unscheduled operations. Reservations for additional operations are obtained through the ARO.

9. Reservations cannot be bought, sold, or leased.

Issued in Washington, D.C., on May 18, 2012.

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